

## PROPOSED REVISIONS TO RULE 38(d) – LAW GRADUATE PRACTICE

2019-05-31 Draft Rule 38(d)

### (d) Clinical Law Professors, Law Students, and Law Graduates

1. *Purpose.* This purpose of this rule is to provide law students and recent law school graduates with supervised instruction and training in the practice of law for a limited time, and to facilitate volunteer opportunities for those individuals in pro bono contexts.

#### 2. *Definitions.*

A. “Law school” means a law school either provisionally or fully accredited by the American Bar Association.

B. “Certified limited practice student” is a law student of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice student.

C. “Certified limited practice graduate” is a law graduate of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice graduate.

~~D. “Clinical Law Professor” is a faculty member teaching a clinical law program at a law school in Arizona either provisionally or fully accredited by the American Bar Association. “Dean” means the dean, the academic associate dean, or the dean’s designee of the accredited law school where the law student is enrolled or the law graduate was enrolled on graduation.~~

~~E. “Dean” means the dean, the academic associate dean, or the dean’s designee of the accredited law school where the law student is enrolled or the law graduate was enrolled on graduation.~~

**Commented [BR1]:** Worth adding academic associate dean? I think these are the deans who now do this type of work.

**Commented [BR2]:** I took out this clause because the dean would be the dean even if he (in the case of AZ schools) didn’t sign these applications.

F. “Period of supervision” means the dates for which the supervising attorney has declared, on the application for certification or recertification, that he or she will be responsible for any work performed by the certified limited practice student or the certified limited practice graduate under his or her supervision.

G. “Supervising attorney” is an active member of the State Bar of Arizona in good standing who has practiced law or taught law in an accredited law school as a full-time occupation for at least two years, and agrees in writing to supervise the certified limited practice student or certified limited practice graduate pursuant to these rules, and is identified as the supervising attorney in the application for certification or recertification. The supervising attorney may designate a deputy, ~~assistant~~, or other staff attorney to supervise the certified limited practice student or certified limited practice graduate when permitted by these rules.

H. “Volunteer legal services program” means a volunteer legal services program managed by an approved legal services organization in cooperation with an accredited law school. Approved legal service organizations are defined in paragraph (e)(2)(C) of this rule.

### 3. General Provisions.

A. Limited Bar Membership. To the extent a professor, law student, or law graduate is engaged in the practice of law under this rule, the professor, law student, or law graduate shall, for the limited purpose of performing professional services authorized by this rule, be deemed an active member of the state bar (but not required to pay fees). The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

B. Nonapplicability of Attorney Discipline Rules to Terms of the Certification. The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor, certified limited practice student, or certified limited practice graduate pursuant to these rules. Termination of certification shall be without prejudice to the privilege of the professor, law student, or law graduate to apply for admission to practice law if the professor, law student, or law graduate is in other respects qualified for such admission.

C. Effect of Certification on Application for Admission to Bar. The certification of a clinical law professor, law student, or law graduate shall not be considered as an advantage or a disadvantage to the professor, law student, or law graduate in an application for admission to the state bar.

**Commented [BR3]:** Just checking – so a designated attorney could not substitute for a clinical law faculty supervisor? I think that is unclear because the designated attorney is authorized by a “supervising attorney to supervise”, and a supervising could be a clinical law professor. I don’t have a good answer for this right now. Anyone?

**Commented [PKN4]:** I don’t understand the preceding RWB comment; so I have not made any additional changes to the supervising attorney definition. Is the concern whether a clinical law professor should be able to be a supervising attorney?

D. Privileged Communications. The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by and among professors, supervising and designated attorneys, certified limited student practice students, and certified limited practice graduates.

#### 4. Clinical Law Professors.

A. Activities of Clinical Law Professors. A clinical law professor who is certified pursuant to this rule may appear as a lawyer solely in connection with supervision of students in a clinical law program in a law school in Arizona. A clinical law professor may appear in any court or before any administrative tribunal in this state in the matters enumerated in paragraph (d)(5)(C) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. Requirements and Limitations for Clinical Law School Professors. To appear as a lawyer pursuant to these rules, the clinical law professor must:

i. ~~be employed as a faculty member of a clinical legal program in an Arizona law school;~~

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ii. be admitted by examination to the bar of any state or the District of Columbia;

iii. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered;

iv. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers; and

**Commented [PKN5]:** If we use the definition of clinical law professor I drafted; then we don't need this specific provision. Thus, I have deleted what is currently provision i of this section.

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iv. submit evidence that the clinical law professor has successfully completed the course on Arizona law described in [Rule 34\(j\)](#).

C. Certification of ~~Supervising the~~ Clinical Law ~~Faculty Professor~~. The certification shall be signed by the [clinical law professor and the](#) dean of the law school on the form prescribed by the clerk of the Court and shall be filed with the clerk and the state bar. The certification shall remain in effect until withdrawn.

D. Duty to Ensure Adequate Supervision and Guidance of Certified Limited Practice Student. The clinical law professor must ensure that certified limited practice students receive adequate supervision and guidance while participating in the law school's clinical law program.

E. ~~Withdrawal or~~ Termination of Certification.

i. The dean ~~at any time, with or without cause or notice or hearing, may withdraw-terminate~~ a certification of a clinical law professor ~~at any time~~ by filing a notice ~~of the termination to that effect, with or without stating the cause for withdrawal, with~~ the clerk of the Supreme Court. ~~The clerk, who shall forthwith~~ mail copies ~~thereof~~ [of the notice](#) to the clinical law professor and the state bar.

ii. The Court ~~may terminate~~ [at any time, with or without cause or notice or hearing, may terminate a certification of a clinical law professor](#) ~~the certification of a clinical law professor at any time without cause and without notice or hearing~~ by filing notice of the termination with the clerk of this Court. [The clerk shall mail copies of the notice to the clinical law professor](#) ~~and with~~ the state bar.

## 5. Law Students

A. Law Student Eligibility for Limited Practice Certification. To be eligible to become a certified limited practice student, a ~~law student~~ applicant must

i. have successfully completed legal studies amounting to at least two semesters, or the equivalent academic hour credits if the school or the student is on some basis other than a

semester, at an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice student from the person on whose behalf the services are rendered; ~~but~~ this requirements shall does not prevent a supervising lawyer, legal aid bureau, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law student, ~~nor shall it~~ prevent any such lawyer or agency from requesting compensation or remuneration for legal services making such charges for its services as it may otherwise properly require authorized;

iii. certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the law school where the student is enrolled as being in good academic standing, of good character, and as having either successfully completed or being currently enrolled in and attending academic courses in civil procedure, criminal law, evidence, and professional responsibility.

B. Application ~~to become a Certified Limited Practice Student~~ or extend the Certification Period.

i. All applications to become a certified limited practice student or ~~requests to change or add a supervising attorney or to~~ extend the period of certification ~~pursuant to these rules~~ must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The clerk of the Court shall send a copy of all approved student limited practice certifications to the admissions department of the state bar.

ii. The application for certification or extension must be signed by the applicant, the dean, of the law school in which the applicant is enrolled, and the supervising attorney.

iii. The applicant must attest that he or she meets all of the requirements of this rule; will immediately notify the clerk of the Court if he or she no longer meets the requirements of the

**Commented [PKN6]:** You raised a comment in the law graduate section about the heading that also pertains here; the current version is a muddle of inconsistency in headings and the like. On balance the current version does not use free standing headings – at least not very often. But, I have not changed it here as it made this section more cumbersome in my view.

Further, the original heading for this section B only mentioned applications to become a certified limited practice student, but the text included extending the certification period. I revised the heading to make it clear this section dealt with both matters. I also included some additional references to extensions in the other sections of this provision.

rules; and has read and will abide by the Rules of Professional Conduct of the State of Arizona and these rules.

iv. The dean of the law school in which the applicant is enrolled must attest that the applicant meets the requirements of these rules, and, to the best of the dean's knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the Clerk of the Court if the certified limited practice student no longer meets the requirements of these rules.

v. The supervising attorney must specify the period during which he or she will be responsible for supervising the applicant and attest that he or she has read and will abide by the Rules of Professional Responsibility and these rules, and will assume responsibility under the requirements of these rules.

#### **C. Permitted Activities and Requirements of a Certified Limited Practice Student; Presence of Supervising Attorney:**

i. **Court and Administrative Tribunal Appearances.** A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the student is appearing has consented in writing to that appearance and the supervising attorney has also indicated in writing approval of that appearance. In each case, the written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the certified limited practice student shall orally advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules. A certified limited practice student may appear in the following matters:

a. **Civil Matters.** In civil cases in justice, municipal, and magistrate courts, the supervising lawyer (or designated lawyer) is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.

b. **Criminal Matters on Behalf of the State.** In any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the supervising attorney (or designated attorney), the supervising attorney (or designated attorney) must be present except when such appearance is in justice, municipal, or magistrate courts.

**Commented [PKN7]:** See separate suggested replacement for the highlighted portion of this section C

e. ~~Felony Criminal Defense Matters. In any felony criminal defense matter in justice, municipal, and magistrate courts, and any criminal matter in superior court, the supervising attorney (or designated attorney) must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.~~

d. ~~Misdemeanor Criminal Defense Matters. In any misdemeanor criminal defense matter in justice, municipal, and magistrate courts, the supervising attorney (or designated attorney) is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the supervising attorney's absence; however, the supervising attorney shall be present during trial.~~

e. ~~Appellate Oral Argument. A certified limited practice student may participate in oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only in the presence of the supervising attorney (or designated attorney) and with the specific approval of the court for that case.~~

~~Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising attorney (or designated attorney) to be personally present for such period and under such circumstances as the court may direct.~~

#### C. Permitted Activities and Requirements of a Certified Limited Practice Student; Presence of Supervising or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has provided written approval of that appearance. The written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge or presiding officer and the certified limited practice student must advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice student in the following circumstances:

a. In any civil case in justice, municipal, and magistrate court, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

b. In any civil case in superior court or before any administrative tribunal.

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c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

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d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

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e. In any misdemeanor criminal defense case, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

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f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

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Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.

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ii. Other Client Representation Activities. Under the supervision of the supervising attorney, but outside the supervisor's presence, a certified limited practice student may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear, but such pleadings or documents must be signed



by the supervising attorney or designated attorney;

b. prepare briefs, ~~motions~~abstracts, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated attorney;

**Commented [BR8]:** Motions?

c. assist indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;

d. give legal advice and perform other appropriate legal services, but only with the consent of the supervising attorney or designated attorney.

iii. Other Non-Representation Activities. ~~A certified limited practice student may perform any advisory or non-representational activity that could be performed by a person who is not a member of the state bar, subject to the approval by the supervising attorney or designated attorney.~~ In connection with a volunteer legal services program and at the invitation or request of a court or tribunal, a certified limited practice student may appear as a law student volunteer to assist the proceeding in any civil matter, provided:

**Commented [PKN9]:** We deleted the first sentence of this paragraph in the law graduate section. Do we want to delete it here as well? I think we should.

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the student's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice student has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

D. Use of the Title “Certified Limited Practice Student.”

- i. A certified limited practice student may use the title “Certified Limited Practice Student” only in connection with activities performed pursuant to these rules.
- ii. When a certified limited practice student’s name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the student is a certified limited practice student pursuant to these rules; state the name of the supervising attorney; be signed by the supervising attorney or designated attorney; and otherwise comply with these rules.
- iii. A certified limited practice student shall not hold himself or herself out as an active member of the state bar.
- iv. Nothing in these rules prohibits a certified limited practice student from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney shall:

~~i. supervise no more than five certified limited practice students concurrently; provided, however, that a supervising attorney who is employed full time to supervise law students as part of an organized law school or government agency training program may supervise up to, fifty certified practice students;~~

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ii. supervise and assume professional responsibility for any work performed by the certified limited practice student while under his or her supervision;

**Commented [PKN10]:** Did we agree to delete this provision for students? We agreed to delete the limiting provisions for supervising attorneys of law graduates.

**Commented [BR11R10]:** I thought so.

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iv. assist and counsel the certified limited practice student in the activities authorized by these rules and review such activities with the certified limited practice student, all to the extent required for the proper training of the certified limited practice student and the protection of the client;

iii. read, approve, and sign any pleadings, briefs or other documents prepared by the certified limited practice student before the filing thereof, and read and approve any document prepared by the certified limited practice student for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney shall still provide general supervision;

iv. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited practice student has or will cease before the date indicated on the certification.

**Commented [PKN12]:** See comment about this provision on next page

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice student during the period of certification or notifies the clerk of the Court that his or her supervision of the certified limited practice student will cease before expiration of the period of certification, the certified limited practice student may request a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, with all information requested on the form, together with any designated fee. The substitute supervising attorney must specify the period during which he or she will be responsible for supervising the certified limited practice student. The substitute supervising attorney must also attest that he or she has read and will abide by the Rules of Professional Responsibility, and these rules, and will supervise and assume responsibility for the certified limited practice student as required by these rules. The certified limited practice student and the substitute supervising attorney must comply with the requirements of Rule 38(d)(5)(c). The clerk of the Court shall issue a modified certification reflecting the substitution of the supervising attorney and shall send a copy of the modified certification identifying the substitute supervising attorney to the state bar. Upon issuance of the modified certification reflecting the substitution of the supervising attorney by the clerk of the Court, the substitute supervising attorney shall become the certified limited practice student's supervising attorney.

**Commented [PKN13]:** In light of your comment in the dean's modification of the certification in the termination provisions pertaining to graduates, I realized that other sections also touched on a substitute supervising attorney but really did not do so in clear manner. See for example the part of what is currently B(i) that I deleted. So I took these various provisions and tried to tie them together here. Also, after examining what the supervising attorney must do vis-à-vis notices, approvals, presence and signature, I elected to underscore that the substitute supervising attorney (and student) has to comply with these provisions as well. This all may be overkill, so please edit.

G. Duration and Termination of Certification. Certification of a certified limited practice student

shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

i. The certified limited practice student requests termination of the certification in writing or notifies the clerk of the Court that he or she no longer meets the requirements of these rules. In such event the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision of the certified limited practice student will cease before the date specified in the notice of certification. In such ~~event~~<sup>event</sup>, the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar. ~~and the~~ The dean may issue a modified certification reflecting the substitution of a new supervising attorney.

iii. The dean at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court. ~~The dean need not state cause and no hearing need be held before the dean files a notice of termination.~~

iv. The Court at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice student or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule, or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

**Commented [PKN14]:** The rules do not specify what information is set out in the certification. The section that deals with the application – section B – sets out what the applicant must provide. If we get this through and approved, we should work with the clerk to draft a certification form that sets out the duration of the certification.

**Commented [BR15R14]:** Good point.

**Commented [BR16]:** I added this because it sounds like the certification terminates only if the dean files a notice w/o cause.

## 6. Law Graduates

A. Law Graduate Eligibility for Limited Practice Certificate. To be eligible to become a certified limited practice graduate, an applicant must:

- i. have graduated from an accredited law school;
- ii. neither ask for nor receive any compensation or remuneration of any kind for services

rendered by the certified limited practice graduate from the person on whose behalf the services are rendered; this requirement does not prevent a supervising lawyer, legal aid bureau, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law graduate, or prevent any such lawyer or agency from making requesting compensation or remuneration for legal services as otherwise authorized; such charges for its services as it may otherwise properly require;

iii. certify in writing that the law graduate has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the accredited law school where the law graduate was enrolled on graduation as having graduated in good academic standing, and being of good character.

#### B. Application to Become a Certified Limited Practice Graduate

i. All applications to become a certified limited practice graduate or requests to change or add a supervising attorney or extend the period of certification must be made on a court approved form—submitted on a form to provided by the Clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The Clerk of the Court shall send a copy of all approved graduate limited practice certifications to the admissions department of the state bar.

ii. The application for certification must be signed by the law graduate applicant, the supervising attorney, and the dean of the law school where the law graduate applicant was enrolled on graduation, and the supervising attorney.

iii. The applicant must attest that he or she meets all of the requirements of these rules, will immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules, and has read and will abide by the Rules of Professional Conduct of the State of Arizona and these rules.

iv. The dean of the law school where the law graduate applicant was enrolled on graduation must attest that that the law graduate applicant meets the requirements of these rules, will immediately notify the clerk of the Court if the certified limited practice graduate no longer meets the requirements of these rules, and has no and, to the best of the dean's knowledge, knowledge of facts or information that would indicate that the law graduate is not is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the clerk of the Court if the certified limited practice graduate no longer meets the requirements of these rules.

**Commented [PKN17]:** Note that this section does not match the law student section regarding extension of the certification period. The reason I left out provision for extension, is that the termination section for law graduates sets out various termination points that would make extension unavailable. Also, there is a provision in that section that allows the supreme court to extend the certification period (that expires no matter what at 12 months) for good cause shown. See Section G.

v. The supervising attorney must specify the period during which he or she will be responsible for and will supervise the law graduate applicant and attest that he or she has read and will abide by, the Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

C. Permitted Activities and Requirements of a Certified Limited Practice Graduate; Presence of Supervising Attorney or Designated Attorney

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i. Court and Administrative Tribunal Appearances. A certified limited practice graduate may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has also provided written approval of that appearance. In each case, the written consent and approval must be filed in the case and be brought to the attention of the judge or the presiding officer. In addition, the certified limited practice graduate must advise the court at the law graduate's first appearance in the case of the certification to appear as a law graduate pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice graduate in the following circumstances:

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c. In any civil case in justice, municipal, and magistrate court unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

d. In any civil case in superior court or before any administrative tribunal;

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c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in justice, municipal, or magistrate court;

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d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

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e. In any misdemeanor criminal defense case unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

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f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.  
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Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.  
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#### C. Permitted Activities and Requirements of a Certified Limited Practice Graduate; Physical Presence of Supervising Attorney;

i. Court and Administrative Tribunal Appearances. A certified limited practice graduate may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the law graduate is appearing has consented in writing to that appearance and the supervising attorney has also indicated in writing approval of that appearance. In each case, the written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the certified limited practice graduate shall orally advise the court on the occasion of the law graduate's initial appearance in the case of the certification to appear as a law graduate pursuant to these rules. A certified limited practice graduate may appear in the following matters:

a. Civil Matters. In civil cases in justice, municipal, and magistrate courts, the supervising lawyer (or designated lawyer) is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.

b. Criminal Matters on Behalf of the State. In any criminal matter on behalf of the state or

**Commented [PKN18]:** See separate proposed draft of highlighted portion of this section C..

any political subdivision thereof with the written approval of the supervising attorney (or designated attorney), the supervising attorney (or designated attorney) must be present except when such appearance is in justice, municipal, or magistrate courts.

c. ~~Felony Criminal Defense Matters. In any felony criminal defense matter in justice, municipal, and magistrate courts, and any criminal matter in superior court, the supervising attorney (or designated attorney) must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.~~

d. ~~Misdemeanor Criminal Defense Matters. In any misdemeanor criminal defense matter in justice, municipal, and magistrate courts, the supervising attorney (or designated attorney) is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the supervising attorney's absence; however, the supervising attorney shall be present during trial.~~

e. ~~Appellate Oral Argument. A certified limited practice graduate may participate in oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only in the presence of the supervising attorney (or designated attorney) and with the specific approval of the court for that case.~~

~~Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising attorney (or designated attorney) to be personally present for such period and under such circumstances as the court may direct.~~

ii. Other Client Representation Activities. Under the general supervision of the supervising attorney or designated attorney, but outside his or her presence, a certified limited practice graduate may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice graduate is eligible to appear, but such pleadings or documents must be signed by the supervising attorney or designated attorney if filed in the superior court, Arizona Court of Appeals, Arizona Supreme Court, or with an administrative tribunal;

b. prepare briefs, ~~abstracts~~motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated



attorney;

c. assist indigent inmates of correctional institutions or other persons who request assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;<sup>4</sup>

d. give legal advice and perform other appropriate legal services, but only after consultation with and consent of the supervising attorney or designated attorney.

iii. Other Non-Representation Activities. In connection with a volunteer legal services program and at the invitation and request of a court or tribunal, a certified limited practice graduate may appear as a law graduate volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the certified limited practice graduate's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice graduate has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

#### D. Use of the Title "Certified Limited Practice Graduate."

i. A certified limited practice graduate may use the title "Certified Limited Practice Graduate" only in connection with activities performed pursuant to these rules.

ii. When a certified limited practice graduate's name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the law graduate is a certified limited practice graduate pursuant to these rules, state the name of the supervising attorney, be signed by the supervising attorney or designated attorney if required by these rules, and otherwise comply with these rules.

iii. A certified limited practice graduate shall not hold himself or herself out as an active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice graduate from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney shall:

i. supervise and assume professional responsibility for any work performed by the certified limited practice graduate while under his or her supervision;

**Commented [PKN19]:** I added supervise; it is implicit but could be clearer

ii. assist and counsel the certified limited practice graduate in the activities authorized by these rules and review such activities with the certified limited practice graduate, all to the extent required for the proper training of the certified limited practice graduate and the protection of the client;

iii. read and approve all pleadings, briefs, or other documents prepared by the certified limited practice graduate as required by these rules; sign any pleading, brief, or other document if required by these rules, and read and approve any document prepared by the certified limited practice graduate for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney must still provide general supervision;

**Commented [PKN20]:** Good point

iv. assume professional responsibility for all pleadings, briefs, or other documents filed in

any court or with an administrative tribunal by the certified limited practice graduate under his or her supervision;

~~vii. provide the supervision to the certified limited practice graduate required by these rules; and~~

~~viii.~~ promptly notify the clerk of the Court in writing if his or her supervision of the certified limited graduate has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice graduate during the period of certification or notifies the clerk of the Court that his or her supervision of the certified limited practice graduate will cease before expiration of the period of certification, the certified limited practice graduate may request a substitute supervising attorney on a form provided by the clerk of the Court, to the clerk, with all information requested on the form, together with any designated fee. The substitute supervising attorney must specify the period during which he or she will be responsible for supervising the certified limited practice graduate. The substitute supervising attorney must also attest that he or she has read and will abide by the Rules of Professional Responsibility, and these rules, and will supervise and assume responsibility for the certified limited practice graduate as required by these rules. The certified limited practice graduate and the substitute supervising attorney must comply with the requirements of Rule 38(d)(6)(c). The clerk of the Court shall issue a modified certification reflecting the substitution of the supervising attorney and shall send a copy of the modified certification identifying the substitute supervising attorney to the state bar. Upon issuance of the modified certification reflecting the substitution of the supervising attorney by the clerk of the Court, the substitute supervising attorney shall become the certified limited practice graduate's supervising attorney.

G. Duration and Termination of Certification. Certification of a certified limited practice graduate shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

i. The certified limited practice graduate requests termination of the certification in writing or notifies the Clerk of the Court that he or she no longer meets the requirements of these rules. In ~~such event~~such event, the clerk shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.

**Commented [PKN21]:** In light of your comment about the dean in the termination section; I realized that other sections also touched on a substitute supervising attorney but really did not do so in clear manner. See for example the part of what is currently B(i) that I deleted. So I took these various provisions and tried to tie them together here. Given, this, I modified the termination provision below that pertained to the dean, as the dean really has no involvement in selecting the supervising attorney. Also, after examining what the supervising attorney must do vis-à-vis notices, approvals, presence and signature, I elected to underscore that the substitute supervising attorney (and graduate) has to comply with these provisions as well. This all may be overkill, so have at it.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision of the certified limited practice graduate will cease before the date specified in the certification. In such ~~event~~event, the clerk shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar. ~~The dean may issue a modified certification reflecting the substitution of a new supervising attorney.~~

iii. The dean at any time, ~~with or without cause and without needing to show cause and without~~with or without cause and notice or hearing, files ~~a~~ notice of the termination with the clerk of the Court.

iv. The Court at any time, ~~with or without cause and without needing to show cause and without~~with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice graduate or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.

vi. The law graduate fails to take the first Arizona uniform bar examination or the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

vii. The law graduate fails to pass the first Arizona uniform bar examination for which the law graduate is eligible or fails to obtain a score equal to or greater than the acceptable score established by the Committee on Examinations on the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

viii. Thirty days after the Court notifies the law graduate that he or she has been approved for admission to practice law and is eligible to take the oath of admission.

ix. The Committee on Character and Fitness does not recommend to the Court that the law graduate be admitted to practice law.

x. The law graduate is denied admission to practice law by the Court.

xi. The law graduate is admitted to practice law.

xii. Expiration of 12 months from the date of the law graduate's graduation from law school unless, before expiration of the 12-month period and for good cause shown by the law graduate, the Court extends the 12-month period.

**Commented [BR22]:** This may be confusing when contrasted with the processes set up above. I think the dean and the new supervisor would sign a new certification under the rules. The certificate would issue from the Court, through the Clerk. If we mean to say that the dean may file a modification of the certificate to sub-in a new supervisor, without requiring a new application and fee, we should say so more clearly.

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